NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AUDREY CARTER,	:	
	:	Civil Action No. 09-4030(FLW)
Plaintiff,	:	
	:	
	:	
v.	:	**OPINION**
	:	
FORD MOTOR CREDIT, et al.,	:	
	:	
Defendants.	:	

APPEARANCES:

AUDREY CARTER, Plaintiff pro se
P.O. BOX 2113
Trenton, New Jersey 08607

WOLFSON, District Judge

Plaintiff Audrey Carter (hereinafter "Plaintiff"), brings this action in forma pauperis, alleging that the named defendants discriminated against her by using illegal business transactions and court proceedings against Plaintiff. (Plaintiff's Complaint, pg. 1). The Court has considered Plaintiff's application for indigent status in this case and concludes that she is permitted to proceed in forma pauperis without prepayment of fees or security thereof, in accordance with 28 U.S.C. § 1915(a). However, having reviewed the Complaint pursuant to 28 U.S.C. § 1915(e)(2), and for the reasons set forth below, this Court finds that this action should be dismissed for failure to state a

claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

BACKGROUND

Plaintiff brings this action against the following defendants: Ford Motor Credit, and Steven Morgan and Keith Morgan of the Morgan Law Office in Cherry Hill, New Jersey. (Compl., pg. 1).

Plaintiff allege that, in 1995, she was told that she would receive a low interest rate on her car loan, but after she had signed the contract, a higher interest rate was imposed. Plaintiff states that she made car payments until she was involved in two auto accidents. When her car insurance company declined to make the car payments, Plaintiff states that she returned the car to the dealer, who then sold the car. However, she also states that she was required to continue making car payments and that she entered into a payment agreement with the Morgan law firm in 1999.

In January 2009, Plaintiff moved to Tennessee and stopped making payments. However, it would appear that she had stopped making payments before January 2009, because Plaintiff admits that a judgment was entered against her in a New Jersey state court in 2008.

Plaintiff contends that defendants have violated her civil rights by discriminating against her through illegal business

transactions on the basis of race and gender. (Compl., at Brief, ¶ 6). She seeks $650,000.00 in monetary damages.

DISCUSSION

A. Standard of Review

The Complaint by a litigant proceeding in forma pauperis is subject to sua sponte dismissal by the court if the Complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks money damages from defendants who are immune from such relief. 28 U.S.C. § 1915(e)(2)(B). In determining the sufficiency of a pro se complaint, the Court must be mindful to construe it liberally in favor of the plaintiff. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007)(following Estelle v. Gamble, 429 U.S. 97, 106 (1976) and Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). See also United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992). The Court must "accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff." Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). The Court need not, however, credit a pro se plaintiff's "bald assertions" or "legal conclusions." Id.

A complaint is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989) (interpreting the predecessor of § 1915(e)(2), the

former § 1915(d)). The standard for evaluating whether a complaint is "frivolous" is an objective one. Deutsch v. United States, 67 F.3d 1080, 1086-87 (3d Cir. 1995).

A pro se complaint may be dismissed for failure to state a claim only if it appears "'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines, 404 U.S. at 521 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). See also Erickson, 551 U.S. at 93-94 (In a pro se prisoner civil rights complaint, the Court reviewed whether the complaint complied with the pleading requirements of Rule 8(a)(2).

The Supreme Court recently refined the standard for summary dismissal of a Complaint that fails to state a claim. Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). The issue before the Supreme Court was whether Iqbal's civil rights complaint adequately alleged defendants' personal involvement in discriminatory decisions regarding Iqbal's treatment during detention at the Metropolitan Detention Center which, if true, violated his constitutional rights. Id. The Court examined Rule 8(a)(2) of the Federal Rules of Civil Procedure which provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P.

8(a)(2).[1] Citing its recent opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), for the proposition that "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do,' "Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555), the Supreme Court identified two working principles underlying the failure to state a claim standard:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice ... . Rule 8 ... does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not "show[n]"-"that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).

Iqbal, 129 S.Ct. at 11949-1950 (citations omitted).

The Court further explained that

> a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausible give rise to an entitlement to relief.

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[1] Rule 8(d)(1) provides that "[e]ach allegation must be simple, concise, and direct. No technical form is required." Fed.R.Civ.P. 8(d).

Iqbal, 129 S.Ct. at 1950.

This Court is mindful that the sufficiency of this pro se pleading must be construed liberally in favor of Plaintiff, even after Iqbal. See Erickson v. Pardus, 551 U.S. 89 (2007). Moreover, a court should not dismiss a complaint with prejudice for failure to state a claim without granting leave to amend, unless it finds bad faith, undue delay, prejudice or futility. See Grayson v. Mayview State Hosp., 293 F.3d 103, 110-111 (3d Cir. 2002); Shane v. Fauver, 213 F.3d 113, 117 (3d Cir. 2000).

B. Discrimination Claim is Time-Barred

Plaintiff's claims of discrimination by illegal business transactions arise from a car sale in 1995 and a restructured car payment schedule in 1999. She appears to allege, without supporting facts, that defendants discriminated against her on the basis of race and gender. This Court finds that Plaintiff's Complaint is subject to dismissal as time-barred.

A court may dismiss a complaint for failure to state a claim, based on a time-bar, where "the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations." Bethel v. Jendoco Construction Corp., 570 F.2d 1168, 1174 (3d Cir. 1978) (citation omitted). Although the statute of limitations is an affirmative defense which may be waived by the defendant, it is appropriate

to dismiss sua sponte under 28 U.S.C. § 1915(e)(2) a pro se civil rights claim whose untimeliness is apparent from the face of the Complaint. See, e.g., Jones v. Bock, 549 U.S. 199, 214-15 (2007)(if the allegations of a complaint, "for example, show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim"); see also Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995) (holding, under former § 1915(d) in forma pauperis provisions, that sua sponte dismissal prior to service of an untimely claim is appropriate since such a claim "is based on an indisputably meritless legal theory"); Hunterson v. DiSabato, 2007 WL 1771315 (3d Cir.2007)("district court may sua sponte dismiss a claim as time-barred under 28 U.S.C. § 1915(A)(b)(1) where it is apparent from the complaint that the applicable limitations period has run")(citing Jones v. Bock, Pino v. Ryan)(not precedential); Hall v. Geary County Bd. of County Comm'rs, 2001 WL 694082 (10th Cir. June 12, 2001) (unpub.) (applying Pino to current § 1915(e)); Rounds v. Baker, 141 F.3d 1170 (8th Cir. 1998)(unpub.); Johnstone v. United States, 980 F.Supp. 148 (E.D. Pa. 1997) (applying Pino to current § 1915(e)).

Plaintiff's bald discrimination claim would appear to fail under 42 U.S.C. § 1981. Section 1981 prohibits intentional, purposeful discrimination in the making and enforcing of private contracts. 42 U.S.C. § 1981(a); see also Gen. Bldg. Contractors

Ass'n, Inc. v. Pennsylvania, 458 U.S. 375, 391 (1982). The statute states:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts....

42 U.S.C.A. § 1981(a)-(b).

"Like many federal statutes, 42 U.S.C. § 1981 does not contain a statute of limitations ... [Therefore,] federal courts should apply the 'the most appropriate or analogous state statute of limitations' to claims based on asserted violations of § 1981." Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 371 (2004). The Supreme Court has held that a state's personal injury statute of limitations governs § 1981 claims. See Runyon v. McCrary, 427 U.S. 160, 180-81 (1976) (applying Virginia's statute of limitations for personal injury actions to a § 1981 claim). In New Jersey, N.J. Stat. Ann. § 2A:14-2 specifies a two-year statute of limitations for personal injury actions.[2] Consequently, in New Jersey, most § 1981 claims are subject to the two-year limitation. Cardenas v. Massey, 269 F.3d 251, 255 (3d Cir. 2001).

Some § 1981 claims, however, are subject to a four-year statute of limitations. In 1990, Congress enacted 28 U.S.C. §

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[2] N.J. Stat. Ann. § 2A:14-2 provides that "[e]very action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within 2 years next after the cause of any such action shall have accrued ..."

1658, which implemented a four-year statute of limitations for any civil action arising under an act of Congress "enacted after the date of the enactment of this section." 28 U.S.C. § 1658. At its inception, § 1981 consisted only of subsection (a). In 1991, Congress added subsections (b) and (c) to § 1981. Subsection (b) "define[d] the term 'make and enforce contracts to include the termination of contracts and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.'" Jones, 541 U.S. at 373 (quoting § 1981(b)). Subsection (c), entitled "Protection against impairment," stated: "[t]he rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."

In Jones, the Supreme Court settled a split among the circuits, and held that if a § 1981 claim is made possible because of a post-1990 enactment, then that claim is subject to the catchall four-year statute of limitations, as set forth in 28 U.S.C. § 1658. Jones, 541 U.S. at 382-83. Otherwise, § 1981 claims, which were actionable prior to the 1990 amendment, are subject to the appropriate two-year statute of limitations of N.J. Stat. Ann. § 2A:14-2. Id.

Here, Plaintiff's contracts at issue were made and enforced in 1995 and 1999. Plaintiff filed this lawsuit on August 4, 2009, almost ten years after the 1999 contract. Consequently, under either scenario for § 1981 claims, Plaintiff's Complaint,

having been filed more than four years and certainly more than two years after the contracts were entered and enforced, is time-barred. Because her § 1981 claim is barred by the applicable statute of limitations, there is no way for Plaintiff to replead her § 1981 cause of action to state a claim for relief, and this Court must dismiss Plaintiff's § 1981 claim, with prejudice.[3]

C. The 2008 Judgment Against Plaintiff

Finally, it appears that Plaintiff is attempting by this lawsuit to make an "end run" around the judgment entered against her by Ford Motor Credit in state court in 2008. To the extent that Plaintiff wishes to challenge that judgment, her recourse is properly made by direct appeal in state court. This Court lacks jurisdiction to hear an appeal of Plaintiff's state court civil judgment, pursuant to the Rooker-Feldman Doctrine.[4]

"Under the Rooker-Feldman doctrine, a district court ... lacks subject matter jurisdiction, if the relief requested effectively would reverse a state court decision or void its ruling." Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 192 (3d Cir. 2006). This doctrine is a narrow one, and "applies only to cases brought by (1) state-court losers (2) complaining of

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[3] This Court notes that, even if this Complaint was timely, Plaintiff failed to allege any facts to support her claim of discrimination based on race or gender. In fact, her Complaint is completely devoid of any facts to support a claim of discrimination.

[4] Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, (1983).

injuries caused by state court judgments (3) rendered before the district court proceedings commenced and (4) inviting district court review and rejection of those judgments." Id.

More simply stated, Rooker-Feldman bars a federal proceeding when "entertaining the federal claim would be the equivalent of an appellate review" of the state judgment. Allah v. Whitman, No. 02-4247, 2005 WL 2009904, at *4 (D.N.J. Aug. 17, 2005)(quoting FOCUS v. Alleghany County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996)). Thus, a cause of action asserted in federal court that ultimately seeks to vacate the decision or reasoning of a state court is barred under Rooker-Feldman. Desi's Pizza, Inc. V. City of Wilkes-Barre, 321 F.3d 411, 419-20 (3d Cir. 2001)(Rooker-Feldman bars those claims that "[are] inextricably intertwined with [the] state adjudication, meaning that federal relief can only be predicated upon a conviction that the state court was wrong.").

This Court finds that the Rooker-Feldman doctrine applies here to bar this proceeding. First, Plaintiff admittedly lost in a New Jersey state court proceeding brought by Ford Motor Credit with respect to the car loan she now challenges as illegally obtained. Second, this New Jersey state court adjudication against Plaintiff occurred before Plaintiff filed this action in federal court. Finally, Plaintiff is essentially asking this Court to review and reject the state court adjudication against Plaintiff. Clearly then, Plaintiff's purported claims against

Ford Motor Credit, with respect to a car loan that she now alleges was illegally obtained, are "inextricably intertwined" with a 2008 decision of a New Jersey state court that entered judgment in favor of Ford Motor Credit against Plaintiff because such claims amount to nothing more nor less than a "prohibited appeal" from the decision of the New Jersey state court. Therefore, this Court does not have subject matter jurisdiction over Plaintiff's claims under the Rooker-Feldman doctrine, and the Complaint must be dismissed accordingly.

CONCLUSION

For the reasons set forth above, this Court will dismiss with prejudice Plaintiff's Complaint, in its entirety, as against all named defendants, because Plaintiff's Complaint is time barred, and further because this Court lacks subject matter jurisdiction over Plaintiff's claims pursuant to the Rooker-Feldman Doctrine. An appropriate Order accompanies this Opinion.

s/Freda L. Wolfson
FREDA L. WOLFSON
United States District Judge

Dated: September 1, 2009